

**AGREEMENT FOR CONSTRUCTION OF PUBLIC WATER BETWEEN
THE CITY OF RAPID CITY AND GREG WHALEN**

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, of 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as the "City," and GREG WHALEN, of PO Box 746, Rapid City, SD 57709 hereinafter referred to as the "Developer."

WHEREAS, the Developer desires to construct approximately 768 linear feet of 10" diameter water distribution main to provide water service for the Developer's property located on Krebs Drive in Rapid City; and

WHEREAS, the Developer plans to construct the 10" water distribution main within Krebs Drive right-of-way; and

WHEREAS, the Developer has submitted preliminary drawings for the requested water distribution main; and

WHEREAS, the City has agreed to accept ownership of the water distribution main upon its completion according to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed by the parties as follows:

1. The Developer hereby agrees to contract with a professional engineer to design the water distribution main. The water distribution main plans shall be designed in accordance with the City's Infrastructure Design Criteria and the City's Standard Specifications for Public Works Construction. All plans shall be approved by the City prior to starting construction.
2. The Developer hereby agrees to contract with a professional engineer to provide construction observation services for the water distribution main construction. The City reserves the right to observe and inspect all construction activities within the public right-of-way.
3. The Developer agrees to construct the water distribution main according to the approved plans. No changes or variances from the plans shall be allowed unless approved by the City in writing.
4. The Developer shall be responsible for all construction costs associated with the water distribution main. Principle components are approximately 768 feet of 10-inch water distribution main, fire hydrants, gate valves, and associated appurtenances.
5. The Developer shall conduct a pre-construction meeting prior to commencing construction of the water distribution main. The Developer shall notify the City and all affected private and public utilities affected by the project of the meeting date and time a minimum of five working days prior to the meeting. The Developer, the Developer's professional engineer, and the Developer's construction contractor shall attend the pre-construction meeting.

6. The Developer agrees to obtain all applicable permits prior to construction.

7. The Developer agrees to provide a two-year warranty that all materials furnished and installed and work completed pursuant to this contract will be new, and shall be of good quality, free from defects, and in conformance with the approved plans and specifications. The warranty shall also meet the requirements of the City's Standard Specifications for Public Works Construction, Section 7.65.

8. Prior to project acceptance by the City, a warranty bond, or other equivalent surety, in an amount equivalent to ten percent (10%) of the total cost of the 10" water distribution main shall be provided to the City to secure the warranty for a period of two years. The surety shall be in a form acceptable to the City Attorney.

9. Acceptance of the project by the City will not be considered until all construction and testing is completed and as-built plans submitted. Upon the City's approval of the same, acceptance will be documented by issuance of an acceptance letter by the City.

10. In the event that any section(s), or provision(s) of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision(s) of this Agreement if it can be given effect without the invalid section(s) or provision(s).

11. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

12. The parties agree that this writing constitutes the entire agreement between them and that there are no other oral or collateral agreements or understandings of any kind or character except those contained herein. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

Dated this ____ day of _____, 2018.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(seal)

State of South Dakota)
) ss.
County of Pennington)

On this the ____ day of _____, 2018, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized to do so, executed the foregoing Agreement for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(seal)

Notary Public, South Dakota
My Commission Expires: _____

DEVELOPER

Greg Whalen
GREG WHALEN

State of South Dakota)
) ss.
County of Pennington)

On this the 3rd day of may, 2018, before me, the undersigned officer, personally appeared GREG WHALEN, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(seal)



Brenda Hafner
Notary Public, South Dakota
My Commission Expires: _____

**My Commission Expires
March 13, 2021**